IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.285 OF 1991

1. M/s.S.S.Wilson & Co.,
15-A, Raviwar Peth,
Akkalkot Road,
Solapur

2. Sudarshan Narsayya
Shriram, Age Major
Occ: Business, R/o
1504, New Pacha Peth
Solapur

3. Kisan Dubayya Shriram
Age Major, Occ:Business
r/o as above.

4. Smt.Shakuntala
Murlidhar Shriram,
Age Major, Occ:
Business, r/o 1503,
New Pacha Peth,
Solapur.

5. Shriprakash Vyankayya
Madur, Age Major
Occ: Business
R/o 269, Sakhar Peth
Solapur. ..Appellants
[1 to 5 Ori.
Accused Nos.
1, 3 to 6

Versus

1. Govind Narsinha
Raichur, Age 48 yrs.
Occ: Service
Resident of I.T.O.
'B' Ward,
Sahyadri Shopping
Centre, Solapur, ..Respondent No.1
(Ori.Complainant)

2. The State of
Maharahstra ..Respondent No.2

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Mr.R.M.Agarwal for Appellants
Mr.H.V.Mehta Addl.P.P. for Respondent No.1
Ms.S.V.Gajare A.P.P. for State-Respondent No.2

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOVEMBER 16, 2005

ORAL JUDGMENT:

1. Through this appeal, the appellants i.e. original accused nos.1 and 3 to 6 have challenged the judgment and order dated 15.1.1991 passed by the learned Judicial Magistrate F.C. Court No.2 Solapur in RCC No. 49 of 1986. By the said judgment and order, the learned Magistrate convicted the appellants under Section 276B of the Income Tax Act, 1961 and sentenced them to suffer S.I. till rising of the Court and to pay a fine of Rs.100/- each i/d S.I. for seven days. It may be stated here that originally six accused were facing the trial. However, original accused no.2 Vithal Rajaram Shriram expired during the pendency of the trial. Hence, the case against him abated and the trial proceeded only in respect of original accused

nos.1 and 3 to 6.

2. Briefly stated, it is the prosecution case that accused no.1 is a registered partnership firm and at the relevant time, accused nos.2 to 7 were its partners. Accused no.1 firm and its partners are income tax assessees. The accounting year of accused no.1 firm is Samvat year i.e. the year ending on each Diwali. It is the prosecution case that during the accounting period relevant to assessment year 1982-83, the accused assessee firm paid interest on the amounts borrowed to the following persons:

1.	Shri.Suhas Laxminarayan Shriram	Rs. 26126-00
2.	Shri.Raju Laxminarayan Shriram	Rs. 25734-00
3.	M/s.Wilson Lingwood	Rs. 238898-00

	Total	Rs. 290758-00

The payments were made by crediting the amounts to the respective payees' accounts in the Books of the firm.

. As per the provisions of Section 194-A of the Income Tax Act, 1961 the accused-firm was required to deduct tax at 10% of the interest credited to the account of the above three persons. As per rule 30(1) of the Income Tax Rules, 1962, the tax deducted, was required to be paid to the account of the Central Government within two months of the expiration of the month in which the last date of the accounting year falls. The last date of the accounting year for the assessment year 1982-83 was 27.10.1981, hence, the accused firm was required to pay tax deducted under Section 194-A to the account of the Central Government before 31.12.1981. However, the said tax was not paid within the stipulated time i.e. before 31.12.1981. The accused-firm did pay the tax, however, it was paid beyond the prescribed period. Thus, it is the case of the complainant P.W.1 Raichur that the accused

have committed offence under Section 276B of the Income Tax Act. Hence, complaint came to be filed against the accused persons after seeking necessary permission from the Income Tax Commissioner, Kolhapur as per provisions of Section 279(1) of the Income Tax Act.

3. Charge came to be framed against the appellants under Section 276B of the Income Tax Act, 1961, for failing to pay the tax deducted on the interest credited to account of the said three persons to the Central Government within the stipulated time. All the accused pleaded not guilty to the said charge and claimed to be tried. The defence of all the accused is that original accused no.2 Vitthal Rajaram Shriram was the Managing Partner of firm accused no.1 and he was looking after all the affairs of the firm including the accounts of the firm. Vitthal Rajaram Shriram was suffering from heart ailment and therefore, he could not pay the amount so deducted at source within the stipulated time. It is the specific stand of all the accused persons that the said delay was not wilful or deliberate. After going through the evidence

adduced by the prosecution, the learned Magistrate convicted and sentenced the appellants as stated in para no.2 above. Hence, this appeal.

4. It may be stated here that the State had also preferred Criminal Appeal No.272 of 1991 for enhancement of the sentence imposed on the appellants. However, the said appeal came to be dismissed by this Court by order dated 25.11.2004.

5. I have heard Shri.R.M.Agarwal, the learned counsel appearing for the appellants, Mr.H.V.Mehta, the learned counsel appearing for the respondent no.1 and Ms.S.V.Gajare, the learned A.P.P. for the State-respondent no.2. I have perused the evidence and the judgment and order of the learned Magistrate. After carefully considering the matter, I am of the opinion that this appeal deserves to be allowed in respect of appellants nos.3 to 6.

6. The prosecution has examined only one witness i.e. P.W.1 Govind Narsinh Raichur who is an Income Tax Officer. As the prosecution story in para no.2

above is based on the evidence of P.W.1 Govind Raichur, I do no find it necessary to repeat the same here as it would only overburden the judgment. However, in short, the evidence of this witness shows that tax deducted from the interest credited to the account of three persons was not paid to the Central Government within the stipulated time.

7. The defence of all the accused is that original accused no.2 Vitthal Rajaram Shriram was the Managing Partner of firm of accused no.1 and he was looking after all the affairs of the firm including the accounts of the firm. Vitthal Rajaram Shriram was suffering from heart disease and therefore, he could not prepare the accounts in time, hence, the amount could not be paid to the Central Government within the stipulated time. It is the specific stand of accused Nos. 3 to 6 that the said Vitthal Shriram was the Managing Partner of the firm who managed the affairs of the firm and none of accused nos.3 to 6 were in charge of or responsible to the firm for the conduct of the business of the firm. Section 278B of the Income Tax Act, reads as under:

. "278B(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

. Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

. (2).....
. (3)....."

. The explanation to the said Section makes it clear that company means and includes a ‘firm’. In the present case, the accused no.1 is a firm. Hence, the provisions of Section 278B would apply to the appellants i.e. firm and partners of the firm. In the present case, there is nothing to show that accused nos.3 to 6 were incharge of and were responsible to the firm for the conduct of business of the firm. No such evidence has been led by the prosecution. In this view of the matter the conviction of the appellants nos. 3 to 6 is

required to be set aside.

. In view of Section 276B of the Income Tax Act, it is clear that original accused nos.3 to 6 cannot be held guilty as there is no evidence to show that they were incharge of and were responsible to the firm for the conduct of the business of the firm. Hence, the conviction in respect of the original accused nos.3 to 6 is liable to be set aside.

8. As far as accused no.1 firm is concerned, the situation cannot be said to be the same as original accused nos.3 to 6. Section 276B does not visualise any mens rea or any wilful or deliberate act on the part of an accused. Section 276B simply provides for "if a person fails to pay to the credit of the Central Government the tax deducted at source as required by him, he would be punished. As far as accused no.1-firm is concerned, Section 278B cannot be pressed into service and Section 278B would only be applicable to the original accused nos. 3 to 6. In this view of the matter, the conviction and sentence as far as original accused no.1 is concerned, deserves to be confirmed.

9. In the result, the conviction and sentence imposed by the learned J.M.F.C. Court No.2 Solapur dated 15.1.1991 in C.C.No. 49 of 1986, on the original accused no.1-firm is confirmed. However, the conviction and sentence imposed on the accused nos.3 to 6 is set aside. The accused nos.3 to 6 are acquitted thereunder. The fine amount if paid by the accused nos.3 to 6 be refunded. Their bail bonds of the accused nos.3 to 6 shall stand cancelled.

Appeal is partly allowed.

[SMT.V.K.TAHILRAMANI,J.]